

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JESUS BORJA, ON BEHALF OF HIMSELF,  
FLSA COLLECTIVE PLAINTIFFS AND THE  
CLASS,

**MEMORANDUM & ORDER**  
22-CV-6178 (EK) (VMS)

Plaintiffs,

-against-

MSK RESTURANT CORP. D/B/A/ YANGSANDO  
AND KEUM SOON PARK,

Defendants.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Scanlon's Report and Recommendation (R&R) dated March 13, 2025. ECF No. 35. Although plaintiff originally filed this action as a putative and class action, he seeks default judgement only on his own behalf. *Id.* at 6. Judge Scanlon recommends that his motion for default judgment as to liability be granted in part, denied in part with prejudice, and denied in part without prejudice. *Id.* at 36. She recommends the motion as to damages be denied without prejudice. *Id.* at 36.

More specifically, Judge Scanlon recommends that defendants be found liable for overtime violations under the FLSA and the NYLL, for withheld tips under the FLSA and the NYLL, and for spread-of-hours violations under the NYLL. She

then recommends that Plaintiff's motion for default judgment on the time-shaving claim be denied and that the claim be deemed abandoned and dismissed with prejudice. On the wage-notice and wage-statements claims, Judge Scanlon recommends they be denied without prejudice and dismissed without prejudice for lack of standing. Finally, she recommends that Plaintiff's motion for default judgment as to damages be denied without prejudice, and that Plaintiff be permitted to file a motion for default judgment as to damages and attorney's fees and costs only, consistent with this report and recommendation, within 30 days of this Memorandum and Order.

Neither party has filed objections and the time to do so has expired. Accordingly, the Court reviews Judge Scanlon's recommendation for clear error on the face of the record. See Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition; *accord State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013).

Having reviewed the record, I find no error and therefore adopt the R&R in its entirety. Thus, as set forth above, plaintiff's motion for default judgment as to liability is granted in part, denied in part with prejudice, and denied in part without prejudice. The motion is denied without prejudice as to damages and plaintiff may file a motion for default judgement as to damages and attorney's fees and costs within 30

days of this Memorandum and Order. The Clerk of Court is respectfully directed to mail this Memorandum and Order to the defendants at their last known addresses.

SO ORDERED.

/s/ Eric Komitee  
ERIC KOMITEE  
United States District Judge

Dated: March 29, 2025  
Brooklyn, New York